

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

LEROY SHUMAKER,

Defendant.

8:16CR113

MEMORANDUM AND ORDER

This matter is before the Court on the Defendant's "Motion Seeking Compassionate Release under 18 U.S.C. 3582(c)(1)(A)(i)," ECF No. 86.

Section 603 of the First Step Act, Pub. L. No. 115-391, 132 Stat. 5194 (2018), amended 18 U.S.C. § 3582(c)(1)(A) to permit defendants to move a sentencing court for modification of sentence "after the defendant has fully exhausted all administrative rights to appeal a failure of the Bureau of Prisons to bring a motion on the defendant's behalf or the lapse of 30 days from the receipt of such a request by the warden of the defendant's facility, whichever is earlier[.]"

Section 3582(c)(1)(A) also provides in pertinent part:

[T]he court . . . may reduce the term of imprisonment (and may impose a term of probation or supervised release with or without conditions that does not exceed the unserved portion of the original term of imprisonment), after considering the factors set forth in section 3553(a) to the extent that they are applicable, if it finds that—

- (i) extraordinary and compelling reasons warrant such a reduction;

. . . .

and that such a reduction is consistent with applicable policy statements issued by the Sentencing Commission[.]

The Defendant notes that he submitted a request for compassionate release to his Warden on April 28, 2020, but the Defendant does not state whether he received a response from the Warden. The Court will assume the Defendant's motion is ripe for consideration.

Following a trial by jury, the Defendant was sentenced on September 13, 2016, to a term of 121 months incarceration and three years of supervised release for possession with intent to distribute methamphetamine. In his pending Motion, the Defendant notes that he suffers from high blood pressure, high cholesterol, and is border-line diabetic. He states that there are no reported cases of COVID-19 at the Bureau of Prisons facility where he is housed in Yankton, South Dakota, yet he fears an outbreak of the virus that causes the disease.

The Court cannot conclude that extraordinary and compelling reasons warrant a reduction in the Defendant's sentence. Accordingly, the Court will not analyze the factors set forth in section 3553(a) or policy statements issued by the Sentencing Commission, and the Motion will be denied.

IT IS ORDERED:

1. The Defendant's "Motion for Seeking Compassionate Release under 18 U.S.C. 3582(c)(1)(A)(i)," ECF No. 86, is denied; and
2. The Clerk will mail a copy of this Memorandum and Order to the Defendant at his last known address.

Dated this 15th day of June 2020.

BY THE COURT:

s/Laurie Smith Camp
Senior United States District Judge